IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Chotu Lal Vs Inder Chand

S.B.CR.MISC. PETITION NO.1086/2005

against the order dt.23.8.2005 passed by Chief Judicial Magistrate, Bikaner in Cr.Case No.12/2005

DATE OF ORDER :: July 11, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. H.S.Shrimali, for the petitioner.
Mr. S.D.Vyas, for non-petitioner.

BY THE COURT:

Mr.S.D.Vyas appears for non-petitioner. Service is, therefore, complete. With the consent of counsel for the parties, the matter is finally heard and being decided.

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 23.8.2005 passed by Chief Judicial Magistrate, Bikaner (for short the 'trial court' hereinafter) in complaint case No.12/2005, whereby the trial court took the cognizance of the offence under section 138 of the Negotiable Instrument Act, 1881 (for short `the Act' hereinafter).

Aggrieved by the order impugned taking cognizance, the petitioner has filed the instant petition.

I have heard learned counsel for the petitioner and the counsel appearing for non-petitioner-complainant. Perused the order impugned.

It is contended by learned counsel for the petitioner that notice as envisaged under section 138 of the Act was issued on 21.12.2004 calling upon the petitioner to pay cheque amount within fifteen days from the receipt of the notice, which was received by the petitioner on 22.12.2004. The fifteen days expires on 5.1.2005, whereas the non-petitioner-complainant filed the complaint against the petitioner before the expiry of fifteen days i.e. on 3.1.2005 and the trial court took cognizance on 5.1.2005. By the date the cognizance was taken, the period of fifteen days' had not expired and, therefore, the order taking cognizance is contrary to law.

Learned counsel for non-petitioner-complainant submits that the controversy involved in the instant petition is squarely covered by a decision of Hon'ble Supreme Court in Narsingh Das Tapadia vs. Goverdhan Das Partant & Anr., **AIR 2000 SC 2946**, wherein the Apex Court held in identical facts and

circumstances of the case that if the complaint is found to be premature, it can await maturity or can be returned to the complainant for filing later on its maturity. In that case, the cognizance was taken by the trial court after the complaint became mature and, therefore, found not illegal.

In the instant case, since the cognizance itself has been taken before the maturity of the complaint i.e. fifteen days, therefore, it is expedient to set aside the order impugned and remand the matter to the trial court to pass a fresh order.

Consequently, the criminal misc. petition is allowed. Order impugned taking cognizance against the petitioner is set aside. The matter is remanded to the trial court to pass a fresh order in accordance with law since by now the period of fifteen days had already expired.

Stay petition also stands disposed of.

[H.R.PANWAR],J.

m.asif/-